

II. REMARKS:

Claim Objections:

The Office expressed concern relative to claims 52 and 54. Claim 52 has been amended to change the language “can be installed” to “are each installable.” This is presumed acceptable to the examiner because claim 53 used the word “installable” and such use did not prompt any expressed concern on the part of the Office. Claim 54 has been amended to remove the duplicate use of “coupled to.”

35 USC §103 Concerns:

The Office expressed concern relative to the claims under 35 USC §103 as based on the Torrez (US Patent No. 6,610,916) and Lombardi (US Patent No. 5,520,292) references. What follows is a discussion of why independent claims 1 and 13 are non-obviousness in view of Torrez and Lombardi.

Independent Claims 1 and 13 as Amended are Not Prima Facie Obvious: Assignee first submits that independent claims 1 and 13 (and their dependent claims) are not *prima facie* obvious. As the Examiner is well aware, “[T]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.” MPEP 2142. The MPEP goes on to state that “To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation [or, as more particularly articulated in the KSR Int’l. Co. v. Teleflex, Inc., 550 U.S. 398 (2007) decision, a “reason”], either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.” MPEP 2143, Basic Requirements of a *Prima Facie* Case of Obviousness. Assignee submits that these three criteria can not be met with respect to independent claims 1 and 13 (and dependents) and explains its position as follows:

Independent Claim 1 - Neither Torrez nor Lombardi (Alone or in Combination) Teaches or Suggests All Claim Limitations of Independent Claim 1: Claim 1, as amended herein, includes the following limitations, none of which are taught, or even suggested by Torrez or Lombardi:

- “*wherein each of said pivot coupler enables rotatable motion of the item support rail that it couples, independently about said substantially vertical axis*”, where such axis is “*defined by the shared rail support leg*.” If, as the examiner suggests, the coupler of Torrez is rotated 90 degrees (see Fig. 2 of page 6 of the office action of December 9, 2009), so as to disclose rotatable motion of an item support rail about such an axis, such alteration does not result in an apparatus that allows for independent rotation, as claimed. This is clear from the fact that if 110 of Fig. 2 (of the office action of December 9, 2009) is rotated, the other rail (unnumbered in Fig. 2, but appearing at the right portion of the Fig. 2) will also rotate. Such is not independent rotation. Further, as to the Lombardi

reference, the rotation allowed is not about a vertical axis “*defined by the shared rail support leg.*” Indeed, as is clear from Fig. 5 of Lombardi, the rotation of the primary bar structure 16 is about stem 69 (which clearly is not defined by the leg 13).

- “*wherein said each of said pivot couplers establishes ... a cable channel that directs a cable from travel in a first direction internally through the item support rails it couples and along a rail axis defined thereby, to travel through at least a portion of said cable channel in a second, different direction and out through a cable port*” (where either a straight or a curved rail can define a rail axis). Torrez does not disclose such a cable channel; indeed, it appears that no component of the Torrez apparatus other than the bar 110 directs travel of the cable at all. It appears the couplers of Torrez’ Fig. 1a effect no guiding of the travel of the cable 102 whatsoever. Neither Fig. 11 nor Fig. 12 of Torrez discloses a coupler that allows passage of a cable therethrough. Lombardi does not mention cables and its couplers do not even appear capable of allowing cable passage therethrough.
- “*wherein each of said pivot couplers comprises separable, first and second compression elements compressed towards each other in an oppositely facing orientation...around a rail terminus of said one of said item support rails and a portion of said shared rail support leg.*” Torrez does not disclose a rail to leg coupler having such separable elements, as claimed. Clearly, the coupler components of Fig. 1a of Torrez (see Figs. 1c, 1d and 1e) are not separable (i.e., cannot be separated from each other, whether totally separated or angularly separated from one another, as with a clamshell design where elements are connected along an edge hinge). 211 of Fig. 1c is an open slit bottom, and Figs. 1d and 1e (see also Figs. 5b and 6b) of Torrez disclose similar “one sided” slitting of the couplers, all of which may allow for the sliding removal of the couplers, but not any separation of components that form the coupler. Such separation allows for the convenience of, among other things, facilitated cable management associated with establishment of a rail and leg to be coupled (and an associated cable) in their installation positions and subsequent establishment of a coupler around them (as opposed to sliding of the rail and leg into their final installation position in the coupler, as Torrez requires). Furthermore, as explained above, neither Fig. 11 nor Fig. 12 of Torrez discloses a coupler that allows passage of a cable therethrough. As to the Lombardi reference, the rail-to-leg couplers do not appear to be compressed “*around ... a portion of [the] shared rail support leg*”, as claimed (as but one difference).

It is also of note that the absence of a claim limitation from this or other lists or discussion of undisclosed limitations should not necessarily be interpreted as a belief that such limitations appear in a prior art reference.

Claims Depending from Claim 1: Of course, because limitations of an independent claim serve to limit claims depending therefrom, the above-discussed limitations also act to limit any claims depending from claim 1. As such, the claims dependent from claim 1 are at least as non-obvious as claim 1. It is further of note that the caselaw relied upon by the examiner in rejections of particular dependent claims is not properly applicable because such caselaw properly applies only where the particular

feature for which the case is cited (e.g., a rearranged part, as in *In re Japikse*, or a change in size, as in *In re Rose*) is the only feature that distinguishes the technology described by such dependent claim from the prior art. However, as, again, each dependent claim includes all of the limitations of the base independent claim from which it depends, there are several other distinguishing features (i.e., limitations of base independent claim 1) that distinguish such dependent claims from the prior art.

Dependent Claim 52: The Examiner expressed particular concern relative to claim 52 (formerly depending claim 13; now depending from claim 1) under 35 USC § 103 as based on Torrez modified by Lombardi, further in view of Zickos (US Patent No. 6,610,916). However, as explained above relative to claim 1, neither Torrez nor Lombardi discloses any of the three limitations appearing immediately below. However, as also explained below, the Zickos reference does not act to supply such missing disclosure.

- *“wherein each of said pivot coupler enables rotatable motion of the item support rail that it couples, independently about said substantially vertical axis”, where such axis is “defined by the shared rail support leg.”* Simply, none of the “legs” of Zickos (78, 88, 94 and 98 of Fig. 1) appear to define substantially vertical axes. As such, the Zickos reference does not disclose *“wherein each of said pivot coupler enables rotatable motion of the item support rail that it couples, independently about said substantially vertical axis”, where such axis is “defined by the shared rail support leg.”*
- *“wherein each of said pivot couplers establishes ... a cable channel that directs a cable from travel in a first direction internally through a different one of said item support rails and along a rail axis, to travel through at least a portion of said cable channel in a second, different direction and out through a cable port.”* Simply, there is no mention of cables in Zickos, nor any provision of componentry that might act as a cable guiding cable channel, as claimed.
- *“wherein each of said pivot couplers comprises separable, first and second compression elements compressed towards each other in an oppositely facing orientation...around a rail terminus of said one of said item support rails and a portion of said shared rail support leg.”* Even if it were presumed (and the Assignee certainly does not agree this to be the case) that joints 82 or 86 include compression elements, such elements are certainly not compressed “around a rail terminus...and a portion of [a] shared rail support leg”, as claimed. Indeed, Zickos does not even disclose a shared rail support leg.

Independent Claim 13 - Neither Torrez nor Lombardi (Alone or in Combination) Teaches or Suggests All Claim Limitations of Independent Claim 13: Claim 13, as amended herein, includes the following limitations, none of which are taught, or even suggested by Torrez or Lombardi:

- *a “shared rail support leg defining a substantially vertical axis about which said two pivot couplers are independently rotatable and said two item support rails are*

independently rotatable” If, as the examiner suggests, the coupler of Torrez is rotated 90 degrees (see Fig. 2 of page 6 of the office action of December 9, 2009) so as to disclose rotatable motion of an item support rail about such an axis, such alteration does not result in an apparatus that allows for independent rotation, as claimed. This is clear from the fact that if 110 of Fig. 2 (of the office action of December 9, 2009) is rotated, the other rail (unnumbered in Fig. 2, but appearing at the right portion of the Fig. 2) will also rotate. Such is not independent rotation. Further, as to the Lombardi reference, the rotation allowed is not about a vertical axis “*defined by the shared rail support leg.*” Indeed, as is clear from Fig. 5 of Lombardi, the rotation of the primary bar structure 16 is about stem 69 (which clearly is not defined by the leg 13).

- “*wherein said cable channel guides a cable from travel in a first direction through a rail terminus interface defined by a coupled item support rail, through at least a portion of said cable channel, and then in a second, different direction through one of said two cable ports, wherein said second, different direction is substantially parallel with said substantially vertical axis defined by said shared rail support leg.*” Torrez does not disclose such a cable channel; indeed, it appears that no component of the Torrez apparatus other than the bar 110 directs travel of the cable at all. It appears the couplers of Torrez’ Fig. 1a effect no guiding of the travel of the cable 102 whatsoever. Neither Fig. 11 nor Fig. 12 of Torrez discloses a coupler that allows passage of a cable therethrough. Lombardi does not mention cables and its couplers do not even appear capable of allowing cable passage therethrough.

Claims Depending from Claim 13: Of course, because limitations of an independent claim serve to limit claims depending therefrom, the above-discussed limitations also act to limit any claims depending from claim 13. As such, the claims dependent from claim 1 are at least as non-obvious as claim 13. It is further of note that the caselaw relied upon by the examiner in rejections of particular dependent claims is not properly applicable because such caselaw properly applies only where the particular feature for which the case is cited (e.g., a rearranged part, as in *In re Japikse*, or a change in size, as in *In re Rose*) is the only feature that distinguishes the technology described by such dependent claim from the prior art. However, as, again, each dependent claim includes all of the limitations of the base independent claim from which it depends, there are several other distinguishing features (i.e., limitations of base independent claim 13) that distinguish such dependent claims from the prior art.

Dependent Claim 53: The Examiner expressed particular concern relative to claim 53 under 35 USC § 103 as based on Torrez modified by Lombardi, further in view of Zickos (US Patent No. 6,610,916). However, as explained above relative to claim 13, neither Torrez nor Lombardi discloses any of the three limitations appearing immediately below. However, as also explained immediately below, the Zickos reference does not supply such missing disclosure.

- a “*shared rail support leg defining a substantially vertical axis about which said two pivot couplers are independently rotatable and said two item support rails are independently rotatable*” Simply, none of the “legs” of Zickos (78, 88, 94 and 98 of Fig.

1) appear to define substantially vertical axes. As such, the Zickos reference does not disclose the limitation, “*wherein each of said pivot coupler enables rotatable motion of the item support rail that it couples, independently about said substantially vertical axis*”, where such axis is “*defined by the shared rail support leg*.”

- “*wherein said cable channel guides a cable from travel in a first direction through a rail terminus interface defined by a coupled item support rail, through at least a portion of said cable channel, and then in a second, different direction through one of said two cable ports, wherein said second, different direction is substantially parallel with said substantially vertical axis defined by said shared rail support leg.*” Simply, there is no mention of cables in Zickos, nor any provision of componentry that might act as a cable guiding cable channel, as claimed.

Additional Information

The amendments submitted herein should be understood to be made as a practicality only, and should not to be construed as creating any situation of file wrapper estoppel or the like as all rights are expressly reserved and may be pursued in this or other applications, such as divisionals, continuations, or continuations-in-part if desired. Relatedly, it should be understood that the amendments made herein are made for tangential issues of clarity and as a matter of the Office’s convenience or expedience only. The amendments should not be interpreted as an action that in any way surrenders a particular equivalency, surrenders any right to patent coverage, or otherwise limits any rights which the Assignee may now or hereafter assert. It should be understood that, unless and to the extent deemed broadened by this amendment, and even as amended, the Assignee expressly reserves all rights, including but not limited to: all rights to maintain the scope of literal coverage with respect to any element as may have existed under the language previously presented, all rights to maintain the scope of equivalency coverage as may have existed under the language previously presented, and all rights to re-present the prior language at any time in this or any subsequent application. To the extent currently foreseeable, no change or reduction in direct or equivalency coverage is believed to exist, and no change or reduction in direct or equivalency coverage is intended through the presentation of this amendment.

Further, the office and any third persons interested in potential scope of this or subsequent applications should understand that broader claims may be presented at a later date in this or a continuation in spite of any preliminary amendments, other amendments, claim language, or arguments presented, thus there is not intention to disclaim or surrender any potential subject matter. It should be understood that such broader claims may require that any relevant prior art that may have been considered may need to be revisited since it is possible that to the extent any amendments, claim language, or arguments presented in this application are considered as made to avoid such prior art, such reasons may be eliminated by later presented claims or the like. Both the examiner and any person otherwise interested in existing or later coverage or considering the possibility of an indication of disclaimer or surrender of potential coverage, should be aware that no such surrender or disclaimer is intended or exists in this application.

Limitations such as arose in *Hakim v. Cannon Avent Group, PLC*, 479 F.3d 1313 (Fed. Cir 2007), or the like are expressly not intended in this or any subsequent matter related.

IV. CONCLUSION:

The Assignee, having addressed each of the concerns raised in the Office Action by amendment and/or explanation, respectfully requests reconsideration and withdrawal of the rejections and objections to the application. All claims now remaining in the application are believed to be in condition for allowance, which is requested at the Office's earliest convenience.

Dated this 9th day of June, 2010.

Respectfully Submitted,

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